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WORKER'S RIGHTS - LABOR LAW
WORKER'S COMPENSATION
SOCIAL SECURITY DISABILITY
LABOR UNION REPRESENTATION
EMPLOYEES RETIREMENT SYSTEM
BODILY INJURIES

LATE

March 29, 2015

HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHT LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Representative, Angus L.K. McKelvey, Chair
Representative Justin H. Woodson, Vice Chair
Members of the Committee

AMENDED NOTICE OF HEARING

DATE: Monday, March 30, 2015
TIME: 2:00 PM
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

STRONG SUPPORT OF HCR 168, HD 1 / HR 104, HD1

I strongly support HCR168, which is a concurrent resolution. As stated previously, I continue to have reservations that HCR 168 may be used as a convenient excuse to not pass or delay other essential workers' compensation (WC) bills, which are now pending before the 2015 Legislature.

That said, the "whereas" portion addresses some of the more critical issues plaguing the State's WC statute for nearly two full decades. Contrary to the laudable social legislation, the situation is increasingly unfair with undue prolonged delay and unnecessary adversarial proceedings. The Disability Compensation Division (DCD) was intended to be informal with prompt adjudications. As a direct result of that change, injured workers ignore going through the WC process and are forced to explore alternative measures to survive following their work accidents. I respectfully submit that before the Legislature convenes in 2016 that it addresses more comprehensive issues, and that it be prepared to make the hard, but necessary changes through sound passage of bills for the next session. We are in unequivocal need to bring back fairness, reduce unnecessary adversarial proceedings, and have prompt adjudications. There is no logical reason that I have innumerable cases that have been ongoing for five (5) to ten years.

The resolution should be amended to include the Chair of the Labor and Industrial Relations Appeals Board (LIRAB) as a member of the working group. We are currently experiencing impossible procedural hurdles to promptly process claims at the

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DCD once an appeal is filed at the LIRAB, thus the WC cases languish. This is because the DCD cannot concurrently address other outstanding DCD issues in the WC cases during an appeal to the LIRAB. Issues arise and continue to change once a determination is made that a claim is covered under the WC statute, but if appealed, you can inevitably expect unnecessary delay to address other issues, such as denial of medical treatment, termination of wage loss benefits, etc.

The situation has worsened to the point that injured workers are confronting many inadequate barriers, in particular, before the DCD, which is the initial level that was intended to be prompt and informal. The DCD cannot accomplish its intended role in the WC process so long as there is crises after crises with positions left unfilled and budget shortfalls. No one can disagree that it is long overdue to bring fairness and a reduction to the delay and litigation in the WC process even though there are some critical proposed bills, which should be given due consideration for passage this legislative session.

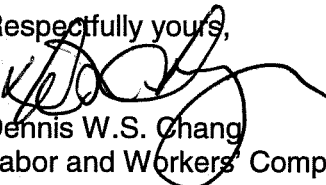
In contrast, as I continue to practice in the WC field, the process becomes increasingly complex. We are into the fifth edition of the AMA Guides for ratings (nearly tripling in size from the first edition). There are countless administrative rules and periodic ad hoc changes. The employers and their representatives retain an army of attorneys to deny and challenge claims and routinely deny more claims at the outset and during ongoing claims both which result in delays and interruptions in the payment of wage loss and critical medical care. They continue to use the abusive so-called "independent medical examination process," which is pending before the House of Representatives, to support the denial and challenge of the pending and ongoing WC claims.

I wholeheartedly support having a working group with the ultimate goal of streamlining the WC process, including converting the system at the DLIR to a computerized system. We should be able to find common ground to have a better system.

For the foregoing reasons, I strongly support HCR 168 with the goal of streamlining the DCD process to avoid the current disaster of having injured workers and their loved ones continue to suffer unnecessary economic ruin and emotional distress following their work accidents.

Thank you for passing this resolution (concurrent) and allowing me to submit this testimony.

Respectfully yours,



Dennis W.S. Chang
Labor and Workers' Compensation Attorney



LATE TESTIMONY

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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March 30, 2015

To: The Honorable Angus L. K. McKelvey, Chair,
The Honorable Justin H. Woodson, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Monday, March 30, 2015
Time: 2:30 p.m.
Place: Conference Room 325, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.C.R. 168 H.D. 1/ H.R.104 H.D. 1 Requesting the Department of Labor and Industrial Relations to Convene a Working Group to Streamline the State's Workers' Compensation Process.

I. OVERVIEW OF PROPOSED LEGISLATION

H.C.R. 168 HD1 and H.R. 104 HD1 requests the Department of Labor and Industrial Relations to convene a working group to streamline the State's workers' compensation process under chapter 386, Hawaii Revised Statutes. The Department strongly supports the measures as the best means to obtain input from the affected stakeholders in the effort to modernize the workers' compensation system.

The Director of DLIR or the Deputy Director shall serve as Chairperson and the working group shall include the following:

- 1) The Director of Human Resources Development or the Director's designee;
- 2) Insurers that issue workers' compensation insurance policies in the State;
- 3) Attorneys who represent employers and employees in workers' compensation claims;
- 4) A representative of a mutual benefit society operating in the State;
- 5) A representative of a health maintenance organization operating in the State;
- 6) Health care providers;
- 7) Any other persons deemed appropriate by the Chairperson of the working group;

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- 8) One person appointed by the President of the Senate; and
- 9) One person appointed by the Speaker of the House of Representatives.

The working group shall submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2017.

The Legislature further requests that the working group consider streamlining the filing process for workers' compensation claims by converting to a computerized system.

II. CURRENT LAW

There is no current statute or working group organized to streamline the workers' compensation process.

Section 12-10-61(d), Hawaii Administrative Rule, pertaining to Filing of reports, allows electronic submission of reports.

III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION

The Department strongly supports HCR 168 HD1/HR 104HD1 to organize a working group of interested parties to improve the processing of workers' compensation claims and decisions and to streamline the workers' compensation process. Such a working group will help the Department fulfill the purposes of the workers' compensation law: to ensure timely payment of wage loss benefits and medical care to the injured worker to assist them in returning to work as quickly as possible.

The purpose of the workers' compensation law is to ensure timely payment of wage loss benefits and medical care to the injured worker to assist them in returning to work as quickly as possible. The DCD is almost exclusively reliant on paper processes that include filing of the initial claims, interim medical reports, carrier's reports and attorney correspondences, requests for hearings, and Independent Medical Exam (IME) orders. The documents received must be manually time stamped, referred to the proper sections to handle, matched and filed in the claimant's case files, and pertinent information inputted into computers.

Since 2008, DCD has lost about 31% of its staff due to the State mandated reduction in force, retirements, and not being allowed to hire additional staffing due to insufficient funding. This resulted in a tremendous backlog in filing, reviewing issues for hearings, scheduling of hearings, issuing of decisions, checking on compliance issues, reviewing and approving settlement documents, etc. It often would take about 6 to 9 months to schedule a case for hearings. During this time,

billing dispute issues were assigned to the Hearings Branch and there was a 2,000 case backlog as of January 2013.

The Enforcement Branch also has lost 10 positions due to reduction in force and retirements and was assigned processing of Certificates of Compliance which increased more than 3 times by 2014. Investigators had to do more clerical work and had less time to monitor and enforce compliance with the temporary disability insurance (TDI), workers' compensation (WC), and prepaid health care (PHC) laws, resulting in a 58% increase in non-complying employers from 2008 to 2014.

The resolution states that injured claimants have complained that scheduling an IME can take longer than a year despite repeated requests and inquiries. Scheduling an IME is usually done by the insurance carrier and not by the DCD. The IME assists the carrier in determining compensability of the claim, gives another doctor's opinion on treatment, and provides a rating to determine permanent partial disability benefits.

Delays in approving settlement documents are both due to lack of staff or errors as well as omissions in the agreement, resulting in the settlement document being sent back to the carrier for corrections. Payments following the approval of a settlement agreement usually are made within 30 calendar days after approval of the agreement or as soon thereafter as possible.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Angus L.K. McKelvey, Chair
Representative Justin H. Woodson, Vice Chair

Monday, March 30, 2015
2:00 p.m.

HCR 168, HD1 / HR 104, HD1

Chair McKelvey, Vice Chair Woodson, and members of the Committee, my name is Alison Ueoka, Executive Director of the Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council supports HCR 168, HD1 and HR 104, HD1 which forms a working group to streamline the workers' compensation system in Hawaii, including evaluating a computer system for the Disability Compensation Division of the Department of Labor and Industrial Relations.

Hawaii Insurers Council would like to be a part of this working group as our members represent approximately thirty-six percent of the property and casualty market in the State of Hawaii and we stand ready to assist in this important endeavor.

Thank you for the opportunity to testify.